

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:24MC00063**

IN RE: REQUEST FOR JUDICIAL
ASSISTANCE FROM THE 8TH
COMMERCIAL COURT OF FIRST
INSTANCE IN ISTANBUL, TURKEY IN
THE *MATTER OF ROYAL-FEN KIMYA
TARIM LTD. V. AKBANK T.A.Ş.*

DECLARATION OF ASSISTANT UNITED STATES ATTORNEY GILL P. BECK

I, Gill P. Beck, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an Assistant United States Attorney in the Office of the United States Attorney for the Western District of North Carolina, counsel for the United States of America. I make this declaration upon information and belief based upon the attached exhibits and communications with personnel in the United States Department of Justice, to which a Letter of Request has been transmitted for execution. I make this declaration in support of the Government's request, pursuant to 28 U.S.C. § 1782(a), for an Order appointing me Commissioner for the purpose of obtaining financial account information from Wells Fargo Bank, N.A.

2. In connection with a judicial proceeding in the 8th Commercial Court of First Instance in Istanbul, Turkey ("Turkish Court"), captioned *Royal-Fen Kimya Tarim Ltd. v. Akbank T.A.Ş.*, Foreign Reference Number 2019/298, the Court issued a Letter of Request seeking information from Wells Fargo Bank, N.A. True and correct copies of correspondence received from the Department of Justice and the Letter of Request received are attached as Exhibits 1 and 2, respectively.

3. The specific information requested by the Turkish Court is reflected in a subpoena addressed to Wells Fargo Bank, N.A., which the United States intends to serve (in substantially

similar format) upon my appointment as Commissioner. A copy of the proposed subpoena is attached as Exhibit 3.

4. In order to assist the Turkish Court in obtaining the requested information, I respectfully request that this Court enter the proposed Order attached to the Application appointing me Commissioner.

No previous Application for the relief sought herein has been made.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted, this 16th day of May, 2024.

DENA J. KING
UNITED STATES ATTORNEY

s/Gill P. Beck
GILL P. BECK
ASSISTANT UNITED STATES ATTORNEY

Exhibit 1

To

Gill Beck

Declaration



KMStanford:lkj

U.S. Department of Justice
Civil Division
Office of International Judicial Assistance

*U.S. Central Authority
Benjamin Franklin Station
P.O. Box 14360
Washington, DC 20044
+1 (202) 514-6700
OIIA@usdoj.gov*

December 28, 2023

BY EMAIL

Gill P. Beck, Civil Chief
United States Attorney's Office
Western District of North Carolina
Suite 1650, Carillon Building
227 W. Trade Street
Charlotte, NC 28202

Re: Request for International Judicial Assistance from the 8th Commercial Court of First Instance in Istanbul, Türkiye in Royal-Fen Kimya Tarim Ithalat Ihracat Sanayi Ve Ticaret Ltmd Sirketi v. Akbank Turk Anonim Sirketi, Ref No. 2019/298
DJ Reference Number: 189-25-24-25

Dear Mr. Beck:

The Office of International Judicial Assistance, within the Civil Division, serves as the U.S. Central Authority for the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters ("HCCH 1970 Evidence Convention"). 28 C.F.R. § 0.49. Pursuant to that Convention, we have received the above-captioned Letter of Request seeking evidence in a civil matter pending in Turkey. We are referring this Request to you for handling. See United States Attorney Manual, § 4-1.325. Within fifteen days, please provide us with contact information for the individual assigned to handle this matter.

In its Request, the Turkish Court requested we obtain evidence in the form of documentation from Wells Fargo Bank, whose national subpoena processing office is located in Charlotte, North Carolina. Specifically, the Request seeks bank account records associated with a specific bank account held by Agrow Allied Ventures Pvt. Ltd. between March 11, 2019, and March 31, 2019. The Request asks that Wells Fargo confirm whether a transfer cancellation occurred and any associated monetary values. Please proceed directly with the § 1782 process as banks will not release customer information without a subpoena.

Once the court order is granted, the subpoena should be sent to the following address:

Wells Fargo Bank
Subpoena Processing Dept.
P.O. Box 1415
Mail Code: D1111-016
Charlotte, NC 28201

There are instructions and frequently asked questions for the execution of Letters of Request on our website at: <http://dojnet.doj.gov/civil/ofl/index.html>. A list of national subpoena processing offices can be found here: <http://dojnet.doj.gov/civil/ofl/documents/guidance/Financial%20Institution%20Subpoena%20Contacts.pdf>. We urge you to review all of these materials before executing this referral. The records can be compelled by your office pursuant to 28 U.S.C. § 1782. **If your office will incur an expense for which you intend to seek reimbursement from the Requesting Authority, you must inform our office before you incur the expense so we can seek assurance from the Requesting Authority to proceed. Failure to do so may result in the Requesting Authority's refusal to reimburse your office for the expense.**

Article 9 of the HCCH 1970 Evidence Convention requires that requests for evidence be executed "expeditiously." Accordingly, we urge that your office handle this matter as quickly as possible. Given the increasing number of evidence requests that United States litigants send abroad pursuant to the HCCH 1970 Evidence Convention, often with short discovery deadlines, expeditious handling of evidence requests by the United States may, as a matter of reciprocity, encourage similar treatment by foreign authorities. We anticipate this Request can be completed within ninety days. If additional time is needed to complete the Request, please provide us a status report by the ninetieth day and every two weeks thereafter.

After you have executed this Request, please return all documents sent with the Request and any original documents obtained through the execution of this Request to us so that we may return them to the foreign court. We would also appreciate receiving copies of any pleadings or motions that have been filed by your office in this case.

If you have any questions, please contact us at OIIA@usdoj.gov or 202-514-6700.

Thank you in advance for your cooperation and assistance in this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Krysta M. Stanford". The signature is fluid and cursive, with the first name "Krysta" being more prominent than the last name "Stanford".

KRYSTA M. STANFORD
Trial Attorney

Enclosures

Exhibit 2

To

Gill Beck

Declaration

**TURKISH EMBASSY
WASHINGTON, D.C.**

Z-2023/95505191/37184446 -

The Embassy of the Republic of Türkiye presents its compliments to the U.S. Department of Justice and has the honor to enclose herewith documents, transmitted by the Turkish Ministry of Justice on behalf of 8th Commercial Court of First Instance, Istanbul (No:2019/298), seeking judicial assistance in the case involving "Wells Fargo Bank."

The said court requests to receive the information mentioned in the attached letter rogatory. The Department of Justice is kindly requested to intercede with the appropriate U.S. Authorities in order to enable the provision of the aforementioned judicial assistance.

The Embassy of the Republic of Türkiye avails itself of this opportunity to renew to the U.S. Department of Justice the assurances of its highest consideration.

December 05, 2023



U.S. Department of Justice
Office of Foreign Litigation
Office of International Judicial Assistance
(Katerina V. Ossenova)
1100 L Street, NW, Room 8102
Washington, D.C. 20530

DEC 13 2023

CI-189-25-24-25

Letter of Request

İSTİNABE TALEPNAMESİ

1. **Name and address of the requesting authority:** Republic of Turkey Istanbul 8th Commercial Court of First Instance
(File No. 2019/298 Esas) Merkez, Abide- Hürriyet Cd. No: 223 34381 Sıgli Istanbul TURKIYE

Talep eden makamı adı ve adresi:

2. **Name and address of the requested authority:** United States Judicial Branch

Talep edilen makamın adı ve adresi:

3. **The namex, nationalities and addresses of the parties to the proceedings:**

Dava taraflarım isim, uyrukluk ve adresleri

Plaintiff: Royal-Fen Kimya Tarım İthalat İhracat Sanayi Ve Ticaret Limited Şirketi (a company in the Republic of Turkey) –Address: Sinanpaşa Mahallesi, Kozan Caddesi, Yüreğir Otogar İle Numara: 226 Seyhan Adana Turkey

Defendant: Akbank Türk Anonim Şirketi (a bank in the Republic of Turkey) Address: Akbank General, 34330, Istanbul/Turkey

Directorate, Sabancı Center, 4. Levent

4. **Where appropriate the names and addresses of their representative**

Eğer varsa yasal temsilcilerinin isim ve adresleri

Attorney for the Plaintiff: Attorney Oğuzhan Kocadurmuşoğlu Address: Çınarlı Mahallesi. Atatürk Caddesi. Number: 47. Filiz Apartmanı, Floor 7, Apartment: 20 Seyhan /adana/Turkey

Defendant's attorney: Attorney Mine KARTEPE-Address: Address: Akbank Head Office. Sabancı Center, 4 Levent. 34330, Istanbul Turkey

5. **The nature and purpose of the proceedings for which the evidence is required giving all necessary information in regard thereto**

Talep konusu delilin sağlanması gerekli kılan davanın niteliği, bu konuyla ilgili verilmesi gerekli bütün bilgiler:

: The lawsuit alleges that the defendant bank failed to fulfill the instruction of the fund transfer transaction that the plaintiff company wanted to realize through the defendant bank via the swift method and thus violated the banking and legal regulations. Thus, the claim for compensation for the damages incurred due to my failure to act appropriately; the defendant issuing bank's instruction to cancel the transfer of funds to Wells Fargo Bank, which will make payment to the recipient account beneficiary, has been officially sent to Wells Fargo Bank. on which date it was received, whether there was any unpaid money to the recipient on the date and time of the receipt of the cancellation request information and documents are requested regarding the availability and, if available, the amount thereof.

6. **Date and place of hearing**

Duruşmanı yeri ve tarihi:

7. **The nature of the letter of request:** Obtaining information and documents from the bank

İstinabe talebinin niteliği

8. **The documents or other property, real or personal, to be inspected:** Bank records

İncelenmesi istenen belgeler, taşınmaz veya kişisel diğer mal varlığı:

9. **Annexes:**

Ekler

- 1 Letter of Request and attached documents (in Turkish)
- 1 Piece of Warrant and attached documents (in translated form)
- 1 Piece Mail and Swift Correspondence (Turkish)
- 1 Piece Mail and Swift Correspondence (in translated form)

Place: Republic of Turkey 8th Commercial Court of First Instance

Date: 04/07/2023



Signature and/or Stamp

Court president

Ferhan Gümüş

3498

Republic of Turkey
ISTANBUL
8TH COMMERCIAL COURT OF FIRST INSTANCE

Number : 2019/298 Basis
Subject: Information Request

04/07/2023

WELLS FARGO BANK
420 Montgomery Street, San Francisco, California/U.S. 94104

In the compensation lawsuit filed by the plaintiff "Royal-Fen Kimya Tarım İthalat İhracat Sanayi Ve Ticaret Limited Şirketi (a commercial company resident in the Republic of Turkey and referred to as the plaintiff in this article) against "Akbank Türk Anonim Şirketi" (a bank resident in the Republic of Turkey and referred to as the defendant in this article) and pending before our court, the plaintiff, the defendant Akbank T.A.Ş.'s Cemalpaşa Adana Branch On 11/03/2019, 135.900,00-USD was transferred from account number [REDACTED] 0037 to Wells Fargo Bank San Francisco Bank with the swift reference 003482276 with the message type MT 103 on 11/03/2019 with the message reference "Agrow Allied Ventures: Pvt. Ltd." to the account numbered [REDACTED] 3428. They claim that the money sent by the plaintiff on 11/03/2019 in the amount of 135.900,00-USD: upon realizing that the recipient and account information did not belong to the company account they originally wanted to send and that they were defrauded: They claim that they requested the defendant bank to take action to cancel the swift transaction of 135.900,00-USD, but that they could not collect this money from the defendant bank.

Claiming that they could not get their money back due to the negligence of the defendant Akbank T.A.Ş., they filed a lawsuit against the defendant for the collection of 135.900,00-USD. In this context, your bank's customer named "Agrow Allied Ventures Pvt. Ltd.", the defendant Akbank T.A.Ş. for the cancellation of the transaction sent by the defendant Akbank T.A.Ş. for the cancellation of the transfer of 135.900,00-USD money allegedly sent to the account numbered [REDACTED] 3428 of your bank's customer named "Agrow Allied Ventures Pvt. Ltd.", the records of your bank between 11.03.2019-31.03.2019 should be examined and the date on which it was officially received by your bank should be notified, whether there is any money not paid to the recipient on the date and time when this cancellation request was delivered; If there is, we kindly request you to inform us of the amount.

Attached to our letter are the swift codes and e-mail correspondence submitted by the defendant bank Akbank T.A.Ş..

Clerk 256737
E-Signed



Address ISTANBUL 8TH COMMERCIAL COURT OF FIRST INSTANCE
For Further Information: Kesem TEMEL, Minutes Clerk

This is to certify that the foregoing English text is a complete and accurate translation from the Turkish language to English language prepared by Yiğit Cilli, professional sworn translator. Phone: +90 544 227 499 e-mail: yigit.cilli@gmail.com address: çolakoglu business centre seyhan adana

Certified Translator

Yigit Cilli



Exhibit 3

To

Gill Beck

Declaration

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO.**

IN RE: REQUEST FOR JUDICIAL
ASSISTANCE FROM THE 8TH
COMMERCIAL COURT OF FIRST
INSTANCE IN ISTANBUL, TURKEY IN
THE *MATTER OF ROYAL-FEN KIMYA
TARIM LTD. V. AKBANK T.A.Ş.*

COMMISSIONER'S SUBPOENA

To: Wells Fargo Bank
Subpoena Processing Dept.
P.O. Box 1415
Mail Code: D1111-016
Charlotte, North Carolina 28201

I, Gill P. Beck, an Assistant United States Attorney for the Western District of North Carolina, acting under the authority of Title 28, United States Code, Section 1782, for the purpose of rendering assistance to Turkey, command that you provide to me evidence for use in a civil lawsuit in the 8th Commercial Court of First Instance in Istanbul, Turkey, entitled *Royal-Fen Kimya Tarim Ltd. v. Akbank T.A.Ş.*, Foreign Reference Number 2019/298, said evidence being:

Please provide record of all communications, if any, received or sent by your bank in connection with the below transaction, as well as a statement of any unpaid money to the listed beneficiary customer account at time of receipt of any request to cancel the below transaction, if in fact received.

Akbank T.A.Ş. – Cemalpaşa Adana Branch
Baraj Cd. No. 41
Seyhan Adana 01140
Türkiye

Sending Account No. [REDACTED]

March 11, 2019
SWIFT Reference: 003482276

Message Type: MT 103
Amount (USD): \$135,900.00
Message Reference: Agrow Allied Ventures Pvt. Ltd.

Wells Fargo Bank – San Francisco Branch
420 Montgomery St.
San Francisco, CA 94104
United States

Beneficiary Account No. [REDACTED]
Beneficiary Customer: “Agrow Allied Ventures Pvt. Ltd.”

If you cannot produce a requested document (including, *inter alia*, because the document has been lost or destroyed), please provide the facts you rely upon in support of your contention that you cannot do so. To the extent a document is not produced because of an assertion of privilege, please state the specific privilege relied upon. If you object to producing only part of a requested document, please produce that portion of the document you do not object to producing and indicate what portion you have withheld based on an assertion of privilege.

Please produce the evidence by email to me at Gill.Beck@usdoj.gov or by mail at the address set forth below no later than _____ (date).

Gill Beck
Assistant United States Attorney
c/o Debbie Gaddy
U.S. Attorney’s Office
Room 233, U.S. Courthouse
100 Otis Street
Asheville, North Carolina 28801

Please note that if you anticipate any charges for these records, please contact me prior to mailing so that we can confirm the charges and the availability of funds. *See* Exception to the Right to Financial Privacy Act for International Judicial Assistance Requests Memorandum (enclosed).

For failure to provide said evidence, you may be deemed guilty of contempt and liable to penalties under the law. The recipient of the attached subpoena may, for good cause shown, oppose the giving of evidence, or the circumstances thereof, by motion timely filed with the Court.

Respectfully submitted, this 16th day of May, 2024.

DENA J. KING
UNITED STATES ATTORNEY

s/Gill P. Beck
GILL P. BECK
ASSISTANT UNITED STATES ATTORNEY
N.C. State Bar No. 13175
Room 233, U.S. Courthouse
100 Otis Street
Asheville, North Carolina 28801
Phone: (828) 271-4661
Fax: (828) 271-4327
Email: Gill.Beck@usdoj.gov

**Re: Exception to the Right to Financial Privacy Act for International
Judicial Assistance Requests**

Dear Records Department:

The Right to Financial Privacy Act (RFPA) does not prevent the execution of international judicial assistance requests for bank records in civil and commercial matters as **the exception outlined in 12 U.S.C. § 3413(d) applies** to such requests. The exception provides in relevant part:

(d) Disclosure pursuant to Federal statute or rule promulgated thereunder: Nothing in this chapter shall authorize the withholding of financial records or information ***required to be reported in accordance with any Federal statute*** or rule promulgated thereunder.

12 U.S.C. § 3413(d) (emphasis added).

The statute which requires the production of these records is 28 U.S.C. § 1782(a). The statute allows district courts to compel the production of evidence from domestic persons or entities in support of foreign litigation. The order may be made pursuant to a request from a foreign or international tribunal and may direct that the documents be produced before a person appointed by the court (such an Assistant United States Attorney).

Courts have adjudicated that international judicial assistance requests made pursuant to § 1782 fall under the exception provided in § 3413(d) because “. . . § 1782 is a federal statute which required that [the bank] disclose the requested financial information.” *Young v. Chemical Bank, N.A.*, 1988 WL 130929, at *5 (S.D.N.Y. 1988). *See also Young v. U.S. Dept. of Justice*, 882 F.2d 633, 639 (2d Cir. 1989); *In re Letter of Request for Judicial Assistance from the Tribunal Civil de Port-Au-Prince, Republic of Haiti*, 669 F. Supp. 403, 407 (S.D. Fla. 1987), *In re Letters of Request from the Supreme Court of Hong Kong*, 821 F. Supp. 204, 211 (S.D.N.Y. 1993).

As the enclosed Commissioner's Subpoena was issued pursuant to § 1782, and Courts have held that requests made pursuant to § 1782 fall under the RFPA exception in § 3413(d), the RFPA does not prevent the execution of this request. Additionally, as the RFPA does not apply, banks cannot rely on the RFPA reimbursement provision as a basis for payment by the United States to a custodian who produces records in response to a foreign request. *See also Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 358 (1978) (citing to Fed. R. Civ. Pro. 26 (c)) (holding “responding party must bear the expense of complying with discovery requests,” though the responding party may ask the court to exercise discretion to find requests unduly burdensome) (superseded on other grounds with 2015 amendments to the Federal Rules of Civil Procedure).